

EXHIBIT 394



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Chapter 24—Tax Solution Development and Deployment

24.1 Policies

24.1.1 General

Appropriate technical, risk management, and other firm resources are applied to the development and deployment of a tax solution. For purposes of this chapter, a *tax solution* is a tax planning idea, structure, or service that potentially is applicable to more than one client situation and that is reasonable to believe will be the subject of leveraged deployment. No minimum revenue threshold applies for defining what is a *solution*.

In general, a solution is not deployed until development of the solution is complete. Development of a solution is not complete until the solution has the requisite sign-offs by the appropriate technical, risk management, and any other personnel.

Approval of a new tax solution by the partner in charge of the Department of Professional Practice—Tax may include conditions on the manner in which the solution is marketed or delivered and on language to be included in engagement letters or other communications with clients, prospective clients and third parties.

For additional information on the WNT solutions development process, refer to the WNT Solution Owners Web page at <http://taxkm.us.kworld.kpmg.com/homepages/wnt/wntonline/solutions/index.htm>.

24.1.2 Specific Service Groups

Additional professional practice policies are provided for the development and deployment of tax strategies and opportunities in the following service groups: State and Local Tax (SALT) and Strategic Business Solutions (SBS).

24.2 General

24.2.1 Appropriate technical, risk management, and other firm resources are applied to the development and deployment of a tax solution. For purposes of this chapter, a *tax solution* is a tax planning idea, structure, or service that potentially is applicable to more than one client situation and that is reasonable to believe will be the subject of leveraged deployment. No minimum revenue threshold applies for defining what is a *solution*.

24.3 Submitting and Approving Ideas for Development

24.3.1 Ordinarily, the development of a solution commences with the submission by a tax leader of an idea to Washington National Tax (WNT) on a Solutions Submission Form. A tax leader is a tax partner, principal, non-partner functional/service line leader, or tax

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managing director. Other firm professionals wishing to submit solution ideas to WNT should involve a tax leader in the process.

- 24.3.2 The leader of the WNT functional group with the primary responsibility for the issues presented by the solution approves (or disapproves) development of the idea. If development is approved, the WNT functional group leader appoints a WNT solution owner, a WNT lead development partner (who may also serve as the WNT solution owner), and a WNT secondary approval partner. The WNT functional group leader informs these people of their roles and directs the WNT solution owner to move forward with the development process. The *WNT solution owner* is a manager or partner in the functional group with the primary responsibility for the issues presented by the solution. The WNT solution owner "owns" the responsibility of getting the idea through development in WNT.

Developing Solutions

24.4 WNT Technical Review Activities

- 24.4.1 Once a solution is approved for development, the WNT solution owner makes any modifications to the Solution Submission Form information that are appropriate at that time and resubmits the form. At this point, the Solution Submission Form information and attachments are also sent to the Department of Professional Practice—Tax (to address risk management issues) and the WNT Tax Controversy Services group (to address tax shelter regulations issues). This early notification of the Department of Professional Practice—Tax and the WNT Tax Controversy Services group allows these groups to conduct their work on the solution at the same time WNT is conducting its technical development of the solution.

- 24.4.2 In developing the solution, the documents to be prepared by the WNT development team and delivered upon completion of technical review are (1) a Solution Abstract and (2) a standard engagement letter. In some cases it may also be appropriate for WNT to prepare standard client presentations. The Solution Abstract may be a *Microsoft Word*TM or *PowerPoint*TM file, containing a description of (a) the scope of KPMG services to be provided clients in delivering the solution, (b) a prototypical fact pattern, (c) the transaction steps, (d) the intended tax consequences, (e) a description of technical underpinnings of the strategy, likely challenges to the technical conclusions, and the manner in which those challenges will be overcome (including citations), and (f) any diagrams that facilitate understanding or marketing of the transaction.

24.5 Approvals

- 24.5.1 **Technical sign-off.** WNT development of the solution is complete when the WNT lead development partner and WNT secondary approval partner give technical sign-off on the Solution Abstract. The WNT lead development partner is responsible for securing the sign-off of the WNT secondary approval partner. Before providing technical sign-off, the WNT lead development partner secures the approval of a partner in any other WNT functional group(s) involved in development. The WNT secondary approval partner is responsible for reviewing the technical conclusions made by the WNT lead development partner.

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Once technical sign-off occurs, the WNT solution owner submits the Web-based WNT Solution Completion Form, marking the box indicating "Technical Review - Approved for Deployment." The Department of Professional Practice—Tax and the WNT Tax Controversy Services group are also sent a similar Web-based form that requests their review completion.

- 24.5.2 **DPP—Tax sign-off.** The partner in charge of the Department of Professional Practice—Tax must approve all solutions from a risk management perspective before they are deployed. The partner in charge of the Department of Professional Practice—Tax also consults with, and obtains the approval of, the Department of Professional Practice—Assurance on GAAP and independence issues.

In general, the WNT solution owner obtains all necessary technical approvals of a solution and major deliverables before submitting them to the Department of Professional Practice—Tax for its final approval. If a solution may raise significant professional practice or risk management issues, it is advisable to consult with the Department of Professional Practice—Tax early in the development process for its views on those issues.

The partner in charge of the Department of Professional Practice—Tax generally will not approve a solution unless the appropriate WNT partner(s)/principals(s) conclude that it is at least more likely than not that the desired tax consequences of the solution will be upheld if challenged by the appropriate taxing authority (e.g., the IRS). In the event that the Department of Professional Practice—Tax does not approve a solution, the originator(s) may revise the solution to make changes designed to meet express objections of the partner in charge of the Department of Professional Practice—Tax and resubmit the revised solution or for approval.

- 24.5.3 **WNT Tax Controversy Services sign-off.** The WNT lead development partner specifies the WNT functional group responsible for analyzing the solution under the tax shelter regulations and ensures that this analysis is submitted to the WNT Tax Controversy Services group for that group's review and sign-off.
- 24.5.4 **Tax Innovation Center sign-off.** If the solution is to be reflected in a *Tax Solutions Alert* or *Tax Services Idea*, or widely communicated to one or more segments of the tax practice by conference call, the solution and major deliverables items also are approved in writing by the Tax Innovation Center (TIC) leadership team partner.
- 24.5.5 **Member firm sign-off.** If a solution involves both foreign and U.S. tax planning, technical and risk management review and approval of the foreign tax aspects of the solution also are obtained from the appropriate technical resource(s) in the member firm in the applicable foreign jurisdiction.

For additional information on the WNT solutions development process, refer to the WNT Solutions Owners Web page at <http://taxkm.us.kworld.kpmg.com/homepages/wnt/wntonline/solutions/index.htm>.

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24.6 Deploying Solutions

- 24.6.1 WNT Involvement.** It will often be the case that the success of deployment activities is enhanced if WNT continues to be involved in the deployment of the solution to individual client situations. Continued WNT involvement is particularly necessary in the case of solutions for which only limited development and deployment materials may have been made available.
- 24.6.2 Opinions requiring special approvals.** In addition, if in the course of the deployment of a solution, it becomes apparent that an opinion will be issued for which WNT and/or Department of Professional Practice—Tax review is required or will be requested, the procedures for such opinion approvals should be followed. See Chapter 41 for guidance on opinion approval requirements.
- 24.6.3 Conditions on marketing.** Approval of a new tax solution by the partner in charge of the Department of Professional Practice—Tax may include conditions on the manner in which the solution is marketed or delivered and on language to be included in engagement letters or other communications with clients, prospective clients and third parties.

Once a particular solution has been approved, it may be marketed by multiple KPMG personnel to multiple potential clients, subject to the conditions set forth below.

- The *Tax Solution Alert* or other document announcing the solution may restrict the marketing or delivery of the solution to designated KPMG personnel; and
 - The partner in charge of the Department of Professional Practice—Tax may determine at any time that KPMG personnel are to cease marketing a previously approved solution due to changes in circumstances, law, regulations or other administrative pronouncements, or market conditions. In the event of such a decision, the owner of the solution and the partner in charge of the Department of Professional Practice—Tax will confer as to the appropriate disposition of situations where the solution has been marketed to a potential client but the project has not yet commenced.
- 24.6.4 Accounting matters.** If the client is a KPMG audit client, tax professionals should consult with the audit team to determine the financial statement implications of the solution. In addition, the solution may impact the recognition of current and deferred taxes for financial statement purposes. Where the client is not a KPMG audit client, the tax engagement team must advise the client to consult with its own auditors concerning the financial statement implications of the solution. See Chapter 44 for additional guidance on accounting advice.

State and Local Tax (SALT) Services**24.7 Area or Locality Specific**

- 24.7.1** The State and Local Tax (SALT) practice, unlike many other service groups, deals with over 50 state and local taxing jurisdictions and multiple types of taxes. Therefore,

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certain strategies and opportunities (i.e., claims for refund) offered to clients may not be appropriate for solution development by Washington National Tax and the Department of Professional Practice—Tax.

- 24.7.2 Any SALT idea that is based on a prospective filing position or a new service is subject to the process contained in sections 24.2 through 24.6 of this chapter, regardless of its area or locality specificity.
- 24.7.3 An idea satisfying all of the following criteria does not need to be submitted to WNT for solution development or approval:
- a state-specific strategy or opportunity;
 - that will not be marketed on a national basis, at least initially; and
 - that is “low risk” (e.g., a stand-alone refund opportunity is usually “low risk”).
- 24.7.4 The following review and approval procedures are followed for SALT strategies or opportunities that are area or locality specific:
- prior to offering the idea to a client or prospect, the idea is reviewed and approved by the State Resource Network member for the specific state and specific SALT functional tax area (e.g., income/franchise tax);
 - prior to offering the idea to a client or prospect, the idea is reviewed and approved by a SALT partner and the functional area practice leader for the geographic area to which the idea applies (if the functional area practice leader is also a partner, a separate partner sign-off is not required); and
 - the reviews and approvals are documented, and a copy of the documentation and technical memoranda in support of the idea are sent to the professional practice partner—tax for the business unit.

24.8 Strategic Business Solutions

- 24.8.1 Strategic Business Solutions (SBS) is a multi-phased, solutions-based, results-oriented service that focuses on the single state or multistate reduction of one or more taxes by restructuring a client’s corporate entity structure and redefining the relationships among those entities. An SBS may result in effective state tax rate reductions and can also produce financial statement benefits. Although occasionally combined, the four phases of an SBS engagement are: feasibility, design, implementation, and post-implementation. For some engagements, the client may prefer that design and implementation be combined and post-implementation review may not be part of the SBS engagement.
- 24.8.2 During the feasibility phase, state tax savings opportunities are identified and the merits of pursuing the opportunities are assessed. Usually, the feasibility phase includes an initial on-site review of a company’s organizational structure, operations, and prior state tax filings. Once the feasibility analysis is completed, the discrete strategies that

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will form the basis of the SBS plan are presented together with the potential state tax savings associated with those strategies. The deliverables associated with feasibility are the "Feasibility Progress Report," a detailed presentation of the feasibility strategies and projected savings benefits that is usually made to the client's tax department, and the "Feasibility Presentation," which is provided to the client's *buyer* (i.e., CEO or CFO and other high-level client officers). Prior to the Feasibility Presentation, the Feasibility Progress Report is reviewed by a SALT partner unrelated to the engagement.

As part of the feasibility process, KPMG M&A Operations should be consulted for assistance and review of the potential, feasible SBS structure to identify potential federal issues that could be implicated and to suggest potential solutions to those issues.

- 24.8.3 Design is an iterative process involving the collaborative efforts of the KPMG and client teams. In the design phase, the strategies proposed in feasibility are evaluated and refined; ancillary costs are assessed; applicable tax laws, as well as regulatory and operational issues, are evaluated; and design conclusions are documented through a series of interim design reports and periodic status meetings. At the conclusion of the design phase, the client is presented with a Final Design Report or, in lieu thereof, a collection of technical memoranda documenting the design of the SBS structure. Prior to providing the Final Design Report (or collection of technical memoranda) to the client, two reviews take place. First, the Final Design Report and supporting technical memoranda (or only the collection of technical memoranda if a Final Design Report is not to be provided to the client) are reviewed by a SALT partner unrelated to the engagement. This review provides an independent evaluation of the soundness of the overall strategy. Second, the Final Design Report and supporting technical memoranda (or only the collection of technical memoranda if a Final Design Report is not to be provided to the client) are reviewed by the appropriate national technical resource, usually in Washington National Tax (e.g., Subchapter C group, Subchapter K group, international tax group). This review determines that the national and international tax ramifications of the design documentation are examined and evaluated. When the final design of the SBS structure is agreed to and approved by the client, KPMG prepares an implementation work plan for client review and approval. This work plan details all actions that are to take place during implementation and will assign responsibilities and completion dates.

As part of the design process, KPMG M&A Operations professionals are to be consulted for assistance with and review of the final design of the SBS structure to identify potential federal issues that could be implicated and to suggest potential solutions to those issues.

- 24.8.4 The implementation phase involves the execution of the specific action steps outlined in the implementation work plan, as well as other actions necessary to resolve tax and non-tax issues associated with the SBS. In addition to completing the action steps detailed in the work plan, implementation includes providing tax-related advice to legal counsel that is necessary with respect to the drafting of legal documents and agreements by legal counsel.

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- 24.8.5 Finally, within 12 months after implementation, KPMG and the client may mutually agree on an acceptable period within which to perform post-implementation review. If the client agrees to engage KPMG for post-implementation review, KPMG works with the client to determine whether the SBS strategies are operating in an appropriate manner in light of any significant business or structural changes communicated to KPMG.
- 24.8.6 It is strongly encouraged that design reports are not to be provided to the client. Instead, a collection of technical memoranda that thoroughly address the federal, state, and other tax consequences of the SBS structure should be provided to the client as they are completed. The following guidelines are to be followed when preparing design deliverables:
- memos do not address non-tax (i.e., operational tax, legal, accounting) considerations. Only tax technical analysis of implementing a particular or structure are provided;
 - refer to the guidance provided under SAS 50 when the accounting treatment of a transaction is desired;
 - each memo has a standard facts session, along with additional facts pertinent to the issue at hand; and
 - clients document the business purpose behind a particular transaction or structure and the memo is communicated to KPMG.
- 24.8.7 All proposed final design documentation (whether titled "Final Design Report" or the collection of technical memoranda) is reviewed and approved by the appropriate national technical resource in WNT (e.g., subchapter C, consolidated returns, subchapter K, compensation and benefits) and by a SALT partner unrelated to the engagement prior to issuance. In addition, for engagements where the fee is in excess of \$1 million, WNT-SALT review is required. This review will also serve as the independent SALT partner review and WNT-SALT will coordinate all other necessary technical resource reviews. A summary of all SALT review procedures is contained in the Professional Practice Update, which is periodically updated and posted to the SALT homepage at <http://taxkm.us.kworld.kpmg.com/homepages/salt/index.htm>.

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Part III Tax Engagement Procedures

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